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OFFICE OF PETITIONS

#16

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 09/124,925

Group Art Unit: 1745

Applicant: Koichi ASHIZAWA et al.

Examiner: T. Dove

Filed: July 29, 1998

Attorney Docket: ASH13001/FJD

Title: (As Amended) CURRENT COLLECTOR WITH  
PENETRATING HOLES OF COMPLICATED  
SHAPE FOR USE IN A SECONDARY BATTERY  
AND MANUFACTURING PROCESS THEREOF

PETITION UNDER 37 CFR 1.181

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

On January 22, 2004 your petitioner was advised that the above-noted application became abandoned as noted in the NOTICE OF ABANDONMENT issued August 27, 2001.

It is respectfully requested that the NOTICE OF ABANDONMENT was issued in error and should be withdrawn and the case reinstated as a pending application.

**FACTS**

1) A final rejection was issued on June 1, 2000. In the final rejection, claims 1, 2 and 4 were rejected under 35 U.S.C. 112, first paragraph because of the term "non-regular." Claim 1 was considered as "....not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention." As to claim 4, the only commentary provided dealt with a further rejected under 35 U.S.C. 112, second paragraph and not the first paragraph. In discussing the rejection under the second paragraph the term "given pressure" was construed as "....a relative term which rendered the claim indefinite."

2) On December 1, 2000 a REQUEST FOR RECONSIDERATION WITH AMENDMENT and a NOTICE OF APPEAL were filed. In the REQUEST FOR RECONSIDERATION WITH AMENDMENT, a request to amend claim 1 and 4 was made. This request changed the term "non-regular" in claim 1 back to "complicated," and the term "given pressure" in claim 4 to "pressure." Both changes returned the respective claims to their status as filed insofar as these terms are concerned. Specifically, claim 1 was returned exactly to its prior status. In other words, these amendments were a bona fide attempt to deal with the rejection under 35 U.S.C. 112. }

3) An Advisory Action was issued on December 18, 2000 indicating that the proposed amendments "will not be entered."

4) In the Brief filed on March 30, 2001, the Appendix thereto reproduced

claims 1, 2 and 4 with claim 1 containing the originally filed term "complicated" and claim 4 containing the term "pressure."

5) On July 17, 2001 a NOTIFICATION OF NON-COMPLIANCE with 37 CFR 1.192(c) was issued in which the Examiner indicated that "The appendix of the appealed claims include the amendments to the claims (filed 12/1/00) filed after the Final Rejection and not entered by the Examiner."

6) A Response to this NOTIFICATION was filed on August 8, 2001. In the Response two observations were made:

(1)

✓ It is not possible for the re-introduction of "complicated" to introduce a "new issue" because it was previously included in claim 1 and rejected. The issue is revisited which cannot, per se, amount to a "new issue" but, in fact to an old issue.

(2)

✓ By stating "...require the examiner to reinstate the rejection of claims 1, 2 and 4" leads, logically, to the conclusion that the old issue is reinstated, and this old issue was addressed in the brief.

7) A NOTICE OF ABANDONMENT was issued on August 27, 2001. The Notice states:

Applicant filed a Request for Reconsideration on 8/8/01 in response to the Notice of Non-Compliance with 37 CFR 1.192(c) sent 7/17/01: The response does not constitute a proper reply to the Final Rejection mailed 6/1/00. The time period for applicant to file a complete new brief in compliance with 37 CFR 1.192(c) has expired. Thus, the application is abandoned.

8) The NOTICE OF ABANDONMENT was received by JONES, TULLAR

& COOPER, P.C., your petitioner's predecessor firm, on August 29, 2001.

9) Your Petitioner, however noted the NOTICE OF ABANDONMENT on January 22, 2004, having been brought to his attention by his secretary here at the firm of BACON & THOMAS, PLLC. The file of this application was brought to the firm of BACON & THOMAS, PLLC from JONES, TULLAR & COOPER, P.C. by your Petitioner. Apparently the matter had never been entered into the docket system of JONES, TULLAR & COOPER, P.C.

**ACTION REQUESTED**

(1)

THAT, the requirements of 37 CFR 1.181(f), *i.e.*, The Two Month Rule, be waived since your Petitioner, only recently learned of the NOTICE OF ABANDONMENT. ✓

(2)

THAT, the NOTICE OF ABANDONMENT be withdrawn as inappropriate.

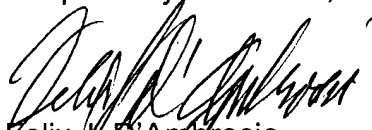
In the NOTICE OF ABANDONMENT noted in 7) above, the statement that "the response does not constitute a proper reply to the Final Rejection mailed 6/1/00 "is incorrect." The "response" noted in the quoted passage refers to the Response filed on 8/8/01 to the NOTIFICATION OF NON-COMPLIANCE, which did address the specific issues raised in the NOTIFICATION OF NON-COMPLIANCE which dealt with the Brief on Appeal and not the Final Rejection.

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It is respectfully submitted that the Response of 8/8/01 did properly address the issues raised in the NOTIFICATION OF NON-COMPLIANCE, and if more was needed a further NOTIFICATION OF NON-COMPLIANCE and not a NOTICE OF ABANDONMENT should have been issued.

Respectfully submitted,



Felix J. D'Ambrosio  
Reg. No. 25,721

February 5, 2004

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